



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 2 2017

OFFICE OF WATER

Mr. William G. Ross, Jr., Chair  
National Advisory Council for Environmental Policy and Technology  
Council Member  
Gillings School of Global Public Health Advisory Council  
University of North Carolina at Chapel Hill  
Chapel Hill, North Carolina 27599

Dear Mr. Ross:

On behalf of Administrator Pruitt, I would like to thank you and the National Advisory Council for Environmental Policy and Technology (the Committee) for your letter of advice and the report<sup>1</sup> produced by the Assumable Waters Subcommittee of June 1, 2017. The EPA appreciates the Subcommittee's active engagement, thorough review, and thoughtful recommendations regarding how EPA could provide clarity regarding which waters a state or tribe assumes permitting responsibility for under an approved Clean Water Act section 404 program and for which waters the U.S. Army Corps of Engineers retains permitting authority. The inclusion of the majority and minority recommendations and rationale will assist the EPA as we evaluate various options on how to provide the clarity requested by states and tribes on this topic.

We will consider all the recommendations in the report, giving particular attention to the key recommendations from the Committee's letter and from the Subcommittee report including:

- The majority recommendation: that those waters over which the Corps retains permitting authority should be identified based upon existing Rivers and Harbors Act Section 10 Lists of Navigable Waters and the Corps should retain all wetlands landward to an administrative boundary established during the development of the memorandum of agreement between the state or tribe and the Corps, with a 300-foot national administrative boundary as a default.
- The minority recommendation: the Corps retains all section 10 waters as defined by the Rivers and Harbors Act, plus all CWA (a)(1) Traditionally Navigable Waters (TNWs). Additionally, the Corps recommends that they retain all adjacent wetlands regardless of furthest reach.
- The Committee's recommendation: that the Agency consider revision of the CWA 404(g) regulations, rather than issue a guidance or policy, as clarifying regulations may provide additional stability as well as guarantee the opportunity for public participation.
- The various implementation and process recommendations contained in the report.

<sup>1</sup> Final Report of the Assumable Waters Subcommittee, May 2017, <https://www.epa.gov/cwa-404/assumable-waters-subcommittee>.

The EPA looks forward to considering these recommendations, and you have my commitment that the EPA will carefully evaluate the recommendations and propose changes to policy, guidance, and/or regulations as appropriate.

The Administrator is fully committed to facilitating the role of states and tribes through cooperative federalism and this issue is a perfect example of where we can work together to better achieve the objectives of the CWA, not only as partners, but where willing states and tribes can take a leading role in protect these resources.

In the meantime, I want to iterate my appreciation for the thoughtful review by the Committee and the subcommittee. Your contributions are extremely valuable not only on this Clean Water Act topic but on all the topics before your Committee.

Sincerely,

A handwritten signature in cursive script, reading "Michael H. Shapiro".

Michael H. Shapiro  
Acting Assistant Administrator

cc:

E. Scott Pruitt, Administrator

Shannon Dosemagen, Acting Vice Chair, NACEPT

Barry Rabe, Chair, NACEPT Assumable Waters Subcommittee

Donna J. Vizian, Acting Assistant Administrator, OARM/EPA

John Goodin, Acting Director, Office of Wetlands, Oceans and Watersheds

Eugene Green, NACEPT, Designated Federal Officer

Jacob Strickler, Assumable Waters Subcommittee, Acting Designated Federal Officer